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Supreme Court, U.S.
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NO. 86-_____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

CAPTAIN C. R. GAINES and
DONALD W. SMITH, M. D.,
Petitioners

v.

LEE ANDREW WILLIAMS,
Respondent

On Writ of Certiorari to the United States Court of Appeals For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. The only evidence presented to the jury was to the effect that decisions for housing an inmate in the Harris County Jail were made by Deputies in the Classification Office, not by the Jail Captain. The jury had no evidence whatsoever that Jail Captain Gaines had assigned respondent Williams to any particular jail cell.

2. The jury had a layman's complaint by respondent Williams that Dr. Smith had stepped on respondent's bare

foot without cause. The Doctor, an expert witness, testified that he used accepted medical practice means to discover if a witness was feigning a seizure. The Doctor administered a sudden, sharp pain to respondent by stepping on his bare foot—and the sudden sharp pain caused the respondent to cease his fake seizure. Medically, further treatment for the seizure was not necessary. The jury verdict is contrary to the unimpeached expert medical testimony.

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PARTIES TO THIS PROCEEDING

PLAINTIFF

Lee Andrew Williams
Attorney Beatrice Mladenka-Fowler

DEFENDANTS

Captain C. R. Gaines
Donald W. Smith, M. D.
County Attorney Mike Driscoll
Assistant County Attorney David R. Hurley
Assistant County Attorney Billy E. Lee.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	I
PARTIES TO THIS PROCEEDING	III
TABLE OF AUTHORITIES	V
REFERENCE TO THE OPINIONS DELIVERED BELOW	1
STATEMENT OF GROUNDS INVOKING JURISDICTION OF SUPREME COURT	3
STATEMENT OF THE CASE	3
ARGUMENTS IN SUPPORT OF THIS PETITION	4
JAIL CAPTAIN GAINES	4
JAIL DOCTOR SMITH	9
PRAYER	17
SIGNATURES	17
CERTIFICATE OF SERVICE	18

TABLE OF AUTHORITIES

CASES	Page
Alberti v. Sheriff of Harris County, Texas, 406 F. Supp. 649 (S.D. Tex. 1975)	6
Bass v. Sullivan, 550 F.2d 229 (5th Cir. 1977), *cert. denied* 434 U.S. 864	16
Cruz v. Beto, 603 F.2d 1178 (5th Cir. 1979)	16
Douthit v. Jones, 619 F.2d 527 (5th Cir. 1980)	16
Estelle v. Gamble, 429 U.S. 97 (1976)	15
Hamm v. DeKalb County, 774 F.2d 1567 (11th Cir. 1985)	16
Meachum v. Fano, 427 U.S. 215 (1976)	7
Mitchell v. Hicks, 614 F.2d 1016 (5th Cir. 1980)	8
Montanye v. Haymes, 427 U.S. 236 (1976)	7
Rhodes v. Chapman, 452 U.S. 337 (1981)	7, 8
United States ex rel. Tyrrell v. Speaker, 471 F.2d 1197 (3rd Cir. 1973)	8

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REFERENCE TO THE OPINIONS DELIVERED BELOW

The genesis of this case was an attempted escape from the Harris County Jail in 1978 by four prisoners. One

escapee who was recaptured was Lee Andrew Williams. He was serving a life sentence as an habitual criminal when he broke out of jail. After recapture, he instituted this suit against Sheriff Heard, Jail Captain Gaines, Jail Doctor Smith, and five other Sheriff's Deputies. The Court appointed an attorney to assist Lee Andrew Williams in a trial to a jury. The trial began on Monday, June 2, 1986. The jury returned its verdict on Tuesday, June 24, 1986. The jury answered two issues adversely to Jail Captain Gaines (Interrogatories No. 24 and 25—App. 7a, 8a). The jury assessed damages at $1,000.00. (Interrogatory No. 30—App. 9a).

The jury answered Interrogatories Nos. 8, 9, 10, and 11 (App. 1a, 2a, 3a and 4a) adversely to Dr. Smith. The jury assessed damages of $1,000.00 (Interrogatory No. 13, App. 5a) and punitive damages of $5,000.00 against Dr. Smith. (Interrogatory No. 14, App. 6a).

On August 15, 1986, the District Court signed its judgment for $1,000.00 against Captain Gaines and for $1,000.00 plus 5,000.00 punitive damages against Dr. Smith. (App. 10a). Captain Gaines and Dr. Smith moved for respective judgments non obstante veredicto. (App. 12a and 15a). The District Court overruled both motions by Order signed on October 7, 1986 (App. 19a).

Captain Gaines and Dr. Smith then appealed to the Court of Appeals for the Fifth Circuit. Without hearing oral argument, the Court of Appeals disposed of the appeal by affirming without an opinion, on its summary calendar, on May 14, 1987. 819 F.2d 1140 (5th Cir. 1987). (App. 21a). This petition for writ of certiorari is timely presented.

STATEMENT OF GROUNDS INVOKING JURISDICTION OF THE SUPREME COURT

(i) The opinion of the Court of Appeals was entered on May 14, 1987.

(ii) No rehearing was requested. No request was made for an extension of time to petition for certiorari.

(iii) 28 U.S.C. § 1254(1) confers jurisdiction on this Court to review this judgment by writ of certiorari.

STATEMENT OF THE CASE

This case arose from an escape attempt from the Harris County Jail in 1978, by four prisoners. One of the prisoners fell to his death in the escape attempt. Lee Andrew Williams was one of the three escapees recaptured. He was serving a life sentence as an habitual criminal. He has filed numerous lawsuits against many of the detention officers having him in custody. Fourteen months after this recapture, Lee Andrew Williams filed this suit against the Sheriff, Jail Captain Gaines, Jail Doctor Smith, and five other Deputies of the Sheriff. The Court appointed an attorney to assist Lee Andrew Williams in a trial to a jury. The trial began on Monday, June 2, 1986, and the jury returned a verdict on Tuesday, June 24, 1986. The jury denied any relief to Williams against the Sheriff and the other five Deputies.

The jury answered a jury interrogatory against Jail Captain Gaines, that he had locked Lee Andrew Williams in cell 3-5 for the purpose of punishing Williams, which proximately caused injuries to Williams in the amount of $1,000.00.

The jury answered a jury interrogatory against Jail Doctor Smith that he had beaten, stomped or kicked Lee Andrew Williams, in violation of Williams' Eighth Amendment right to be free from the infliction of cruel and unusual punishment, that Jail Doctor Smith did not act in good faith in his treatment of Williams, and that Williams was entitled to compensatory damages of $1,-000.00 from Dr. Smith and punitive damages of $5,-000.00 from Dr. Smith.

Jail Captain Gaines and Jail Doctor Smith each moved for judgment non obstante veredicto. The District Court denied each motion. Jail Captain Gaines and Jail Doctor Smith each appealed to the Court of Appeals for the Fifth Circuit, which affirmed the Trial Court on May 14, 1987, without a hearing and without a written opinion. This Petition for Writ of Certiorari is the final step for justice to be accorded Jail Captain Gaines and Jail Doctor Smith for performing their official duties.

ARGUMENTS IN SUPPORT OF THIS PETITION

JAIL CAPTAIN C. R. GAINES

In paragraphs numbered 33 and 34 of his First Amended Complaint Lee Andrew Williams alleges that DEFENDANTS placed him in a psychiatric cell block and kept him there five months. Jail Captain Gaines is NOT mentioned by name. Through nine volumes of the Transcript of testimony at trial, from Monday, June 2, 1986, and ending Thursday, June 19, 1986, there is NO EVIDENCE of any policy or of any involvement of Jail Captain Gaines in placing Lee Andrew Williams in ANY cell. The jury had no evidence supporting its

answer to the interrogatory that Captain Gaines, knowingly and without justification, placed Lee Andrew Williams in a cell in 3-5 only for the purpose of punishing him.

Captain Gaines testified at trial in response to questioning from plaintiff's attorney (Tr. 6-102/6):

> "Now, the, sending them to the detention center as a housing situation, that is a final determination that is strictly and totally in the hands of the classification department, who weighed all of the factors involved and then determined what cell they were put in. Even as Captain of the Jail, the only way I could override classification was to put the prisoner in a single cell, and then advise classification of what I did. This was all in the written procedures. I would advise them I have put prisoner X, Y, Z into this cell for this reason. This is called administrative segregation."

Beginning at page 117 of Volume 6 of the Transcript, Captain Gaines answered questions from the attorney defending Harris County, concerning Jail policy in housing inmates. On page 119, the Captain testified that the three escapees were separated as much as possible, so they could not talk and make up their stories together. One was sent to the sixth floor of the Jail, in a cell by himself. One was sent to the fifth floor of the Jail, in a cell by himself (that one being Lee Andrew Williams). The third was sent to the Detention Center. Because of their recent joint assault on a Floor Deputy and escape attempt, all were kept separated from each other, as well as kept in single cells apart from other inmates.

Sergeant Billy F. Anderson testified to the jury, beginning at page 53 of Volume 7 of the Transcript. He testified that he had worked in corrections in the Air Force for 17 years. He had graduated from Sam Houston University with a Bachelor of Science degree in Law Enforcement and Police Science. (Tr. 7-55/9). In his testimony he testified that he was classification officer, that it was his duty to interview inmates and to determine where they will be housed within the Jail, taking many varying factors into consideration when making a housing determination.

In the case of *Alberti v. Sheriff of Harris County, Texas,* 406 F. Supp. 649, 669 (S.D. Tex., 1975), the Sheriff was directed to segregate inmates suitably by classification. The Sheriff complied. Classification was applied to Lee Andrew Williams. That classification resulted in him being placed in a cell by himself. He was a maximum security risk, an habitual criminal serving a life sentence. He was one who assaulted a Deputy by life-threatening wounding. He had attempted an escape that had cost the life of one of the escapees. He was housed in a maximum security area. He claimed that the area where he was housed, cellblock 3/5, was an area where psychiatric inmates were housed. Article 5115, Vernon's Texas Civil Statues, prohibits housing a person suspected of insanity, or one who has been legally adjudged insane, in a jail for more than 24 hours. No evidence was given to the Court that such statute was violated by the Sheriff—or by Captain Gaines. The plaintiff himself, when questioned by his attorney, told the jury:

> "From my observation and from what I was told by the medical assistants who come up there daily, that the inmates that were housed in there were undergoing some form of psychiatric treatment or, or care or evaluation, and that they were all on medication, some form of psychotic medication." (Tr. 2-21/24). That was rank hearsay—not evidence.

Plaintiff admitted that he has been evaluated as being psychotic, and in need of psychiatric treatment. (Tr. 2-22/16). Even had he not admitted the fact, his willing participation in the assault on the Floor Deputy and attempted escape would be compelling evidence to an unbiased observer that he was not playing with a full deck.

In *Meachum v. Fano,* 427 U.S. 215, 224 (1976), the Court says that, given a valid conviction, a criminal defendant has been constitutionally deprived of his liberty to the extent that the State may confine him and subject him to the rules of its prison system so long as the conditions of confinement do not otherwise violate the Constitution.

The Supreme Court decided *Montanye v. Haymes,* 427 U.S. 236, 242 (1976), the same day it decided *Meachum.* In *Montanye,* the Court said that as long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the inmate's treatment by prison authorities is not subjected to judicial oversight.

Rhodes v. Chapman, 452 U.S. 337, 349 (1981), says that the Constitution does not mandate comfortable prisons—that prisons that house persons convicted of serious crimes cannot be free of discomfort. In a footnote (14) on that page, the Court again notes that a prison's

internal security is peculiarly left to the discretion of prison administrators.

A prisoner is not entitled to his choice of prison accommodations. *United States ex rel. Tyrrell v. Speaker,* 471 F.2d 1197, 1201 (3rd Cir. 1973). A prisoner has no federally created liberty interest in remaining in a particular unit within a prison. *Mitchell v. Hicks,* 614 F.2d 1016, 1018 (5th Cir. 1980). In *Rhodes v. Chapman, supra,* the inmates were bellyaching a Federal case that placing them two in a cell was cruel and unusual punishment and unconstitutional. Here, Lee Andrew Williams says that placing him in a cell by himself is "punitive". As to it being illegal, the Supreme Court says, 452 U.S. 337, at 347:

> ". . . But conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional. To the extent that such conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society."

Lee Andrew Williams was serving a life sentence as an habitual felon. He was involved in a murderous assault on a Floor Deputy who was overpowered and locked into a cell, handcuffed with his own cuffs. He was left in the Jail when one of the escapees stepped into eternity, taking the rope with him which Lee Andrew Williams had intended using to escape. When he was recaptured, he then sought to get revenge on his captors by charging *them* with criminal abuse of Williams' civil rights. With absolutely no evidence that Captain Gaines had placed Lee Andrew Williams in the maximum security single cell AS PUNISHMENT, or that Captain Gaines had even made

the decision where Williams would be housed, the jury reached into thin air for a verdict favorable to the felon and cruel and unusual punishment to a Jail Captain doing his duty right by the book, as a good officer is required to do. Not only is the jury verdict not based on any evidence that was presented to the jury, it is also contrary to all the case law cited in argument as to proper care and custody of inmates at high risk, the responsibility of the Jail personnel to maintain safe custody, and the repeated statements that a Court is not the proper repository of expertise to make decisions affecting the safe custody of (1) the Jail, (2) the Jail personnel, and (3) the criminal inmates. Justice cries for the Court to set the verdict aside.

JAIL DOCTOR SMITH

Within minutes after the night shift of Deputies came on duty at 11 p.m. July 22, 1978, four inmates overpowered a Deputy, on the sixth floor of the Harris County Jail, took his keys, and locked him into a cell, handcuffed, gagged, and with his legs tied together. The escapees made their way to the roof of the Jail. A rope had been fabricated by them from torn bedding. One escapee lowered himself on the rope off the rooftop. When he had descended only a few feet the rope broke. His descent for the next six floors was so rapid as to be injurious to his health—permanently. The three remaining on the roof had only about five feet of rope, which was an amount that would get them down to the sidewalk in one giant step for a man, but none volunteered to be second. They sought another means of escape. Before finding another and safer exit, they were apprehended by Jail Deputies, who had been alerted to the escape. After some "taking

of inventory" to make certain exactly how many inmates were involved, and locating the Jail keys taken from the assaulted Deputy, some of the contraband weapons utilized by the escapees remained undiscovered by officers and were presumed by them still to be among the inmate population. Two Deputies were sent to question Lee Andrew Williams about the missing weapons. Corporal Dorman and Deputy Lassen went to the area where Williams was temporarily being detained and started to question him about the missing weapons. Williams feigned a seizure. The Deputies called for a Medic. The Medic determined that he could not handle the medical problem, so he directed the two Deputies to take Williams to the Clinic, which they did, accompanied by the Medic. Williams told the jury that Dr. Smith ground his foot on Williams' bare foot FOR NO REASON AT ALL. The jury believed Williams and awarded him $1,000 and $5,000 punitive damages against Dr. Smith. (Record Excerpts, Page 2—Interrogatories 8, 9, 10, 11, 13 and 14). The factual statements to which Williams testified are without any collaboration by any other witness. The controverting evidence of other witnesses is overwhelming. The expert testimony of Dr. Smith is unimpeached and binding on the trier of facts in an area where the jury has no expertise on which to draw.

Lee Andrew Williams is not a model citizen. Prevarication is his longest and strongest suit. When Corporal Dorman and Deputy Lassen questioned him about the missing weapons, Williams pretended to have a seizure so as to escape a "question and answer" session. The Medic summoned by the Deputies could handle aches and pains, but he had no training in coping with a "looney", so he sent the Deputies with the "body" to the Clinic where

the Doctor could check it out. Dr. Smith determined that nothing APPARENT adversely affected Williams in his OUTWARD physical body, that his eye, ear, nose and throat areas functioned properly. The Doctor then made some testings as to whether Williams retained any symptoms of consciousness, tests that Williams' skill in deception rendered inconclusive. As a last resort, Dr. Smith inflicted a SUDDEN, SHARP PAIN on the patient—he stepped on the bare foot of Williams and ground his foot sharply. If Williams had been in a seizure he would not have reacted at all to the pain. It would then be necessary to inject the powerful stimulant into the patient's body to start its proper functioning again. However, the administration of the sudden sharp pain brought Williams from his faking. Necessity vanished for administering a powerful stimulant to restore body functions. Williams *did not have a seizure.* His actions were all lies—lies exposed by the Doctor inflicting sudden, sharp pain on an imposter.

Corporal Dorman, on questioning from his own attorney, testified about his asking Williams concerning the missing weapons. (Tr. 7-99/14). The Corporal said that Williams did not respond to any questions about the weapon. (Tr. 7-99/18). He began to breathe erratically, short breaths, as though he might be hyperventilating. (Tr. 7-99/24). This testimony is repeated in the Transcript of Volume 7, page 102, line 2: When the Deputies asked him about the weapons, he began to breathe rapid short breaths and collapse toward the floor. A Medical Assistant arrived on call and directed that the Deputies assist Williams to the dispensary on fourth floor. (Tr. 7-103/3). Corporal Dorman waited outside the door of the examining room while Dr. Smith examined Williams. (Tr. 7-105/9). He did not observe Dr. Smith, or anyone

else, abuse Lee Andrew Williams. After approximately 15 minutes, Dr. Smith directed the return of Williams to the normal jail population. (Tr. 7-106/3). On cross-examination from the attorney representing plaintiff, Corporal Dorman was asked if he could see Lee Andrew Williams in the clinic, and testified he could see Williams lying on the floor (Tr. 7-113/14) and Dr. Smith kneeling beside him (Tr. 7-114/3), with what appeared to be some involuntary movement of Williams' arms and legs.

Deputy Lassen, on direct examination by his counsel, testified (beginning at Tr. 7-129/21) that a question was asked Williams about the missing weapon, that Williams' breathing became restricted, his eyes rolled back, and he fell forward to the floor. Lassen and Dorman picked him up and sat him on the bench, trying to reassure him they were not going to hurt him, when he again fell toward the floor. The two Deputies laid him on the floor and called to the Floor Deputy for a Medic. A Medic appeared in two or three minutes. (Tr. 7-131/3). After the Medic checked Williams, he directed the Deputies to take Williams to the clinic. (Tr. 7-131/14). Williams *did* walk, but not normally, to the clinic. (Tr. 7-132/3). He was "wobbly" and still breathing in fast, shallow breaths. (Tr. 7-132/8). Deputy Lassen further testified beginning at Transcript 7-134/20, that when they sat Williams in a chair that he started sliding from it toward the floor, and Dr. Smith directed them to lay him on the floor. (Tr. 7-135/3). Williams was not talking to the Doctor, who was asking him questions, but was moaning and groaning. (Tr. 7-137/11). Deputy Lassen was in the clinic all the while Williams was there. Lassen did not ever see Williams on the examining table, nor did he see Dr. Smith ever strike Williams. (Tr. 7-139, passim).

Donald W. Smith, M. D., responded to questions from the attorney for plaintiff, making response to her inquiry that Williams had sued the Doctor before—"Probably many times." (Tr. 4-25/16). To her further questioning, Dr. Smith testified that he had applied painful pressure to Lee Andrew Williams' foot for a diagnostic purpose, part of an accepted medical procedure. He testified further (Tr. 4-28/6) that Williams had been brought to the infirmary on July 23, 1978, with symptoms suspiciously similar to a seizure disorder—epilepsy. The Doctor made a quick physical examination, but could find no reason for his outward appearance of being in marked distress.

> "PREVIOUSLY, HE HAD MEDICALLY MALINGERED AND HAD ABUSED THE MEDICAL CARE OF THE STAFF AFFORDED HIM. HAVING THIS KNOWLEDGE, I ELECTED TO APPLY PAINFUL STIMULI TO HIS TOES BY CAREFULLY APPLYING PRESSURE THERETO WITH THE HEEL OF MY SHOE. IMMEDIATELY, HIS CLINICAL CONDITION IMPROVED. HE CEASED HIS CONVULSIONS AND TREMBLING. HE CEASED SALIVATING. HE SUDDENLY WAS ABLE TO COMMUNICATE WITH THE DEPUTIES AND MEDICAL ATTENDANTS. SUCH A RECOVERY MADE IT UNNECESSARY TO ADMINISTER DANGEROUS DRUGS AS AN EMERGENCY ATTEMPT TO ALLEVIATE A SEIZURE DISORDER." (Tr. 7-28/14).

On page 13 of Volume 8 of the Transcript, counsel for defendant Harris County qualified Dr. Smith as an expert witness, the Court acknowledging that he had already testified as an expert, and counsel for plaintiff

acknowledging that the Court had accepted the Doctor as an expert. (Tr. 8-15/i).

On pages 54-55 of Volume 4 of the Transcript of testimony, Dr. Smith testified that he was a Lieutenant Colonel in the Medical Corps of the United States Army Reserve, and had 26 years of Army activity at the time of trial.

Differing from the foregoing testimony of Dr. Smith, Corporal Dorman and Deputy Lassen, plaintiff Lee Andrew Williams spent a considerable time testifying. On voir dire questioning by counsel representing Harris County, he testified that he sued Dr. Smith over a disagreement—the treatment the Doctor prescribed for Williams' headaches and lack of eating was not the treatment Williams prescribed for his own treatment while in detention in 1976. (Tr. 1-11 through 1-13). In Transcript Volume 2, page 33, beginning at line 17, Williams stated that in 1977 he filed a suit against Deputies at the detention center for physical abuse. Except for Dr. Smith, none of the Deputies in this suit were defendants in the 1977 suit. The 1977 suit was dismissed.

Beginning at page 13 of Transcript Volume 2, line 19, the plaintiff states that Corporal Dorman and Deputy Lassen beat the stuffin' out of him when they came to his cell. His questioning is by his own counsel. The jury did NOT believe Williams' story as to Corporal Dorman and Deputy Lassen. Neither did the jury believe his story as to Deputy Des Champs assaulting Williams, who had in fact assaulted Des Champs in the jail break attempt. For that matter the jury also did not believe Williams' stories about Sheriff Heard, Lieutenant Sparks

and Sergeant Anderson brutalizing him, either. By some strange quirk, the jury did believe that Dr. Smith wrongfully abused Lee Andrew Williams when he stepped on Williams' bare foot, even though that sudden, sharp pain administered to the prisoner did put an end to the play-acting and make it unnecessary for further medical treatment of the "seizure".

A prisoner must rely on the jail authorities to provide what medical attention may be necessary for his welfare. In this case before the Court, we have a classic societal goof-off getting some revenge at the expense of the society that imprisoned him. The felon failed in his escape attempt. One of his compatriots fell to his death. They murderously assaulted the Floor Deputy in making their break. When Deputies tried to get him to tell where the weapons were hidden, Williams took refuge from their questions by feigning a seizure—and quite convincingly. After a preliminary examination of Williams disclosed no apparent reason for his "seizure", Doctor Smith acknowledged that he administered a sudden, sharp pain to the actor that would take him by surprise if he were acting, but would not get any response from a seizure victim. Williams was pretending only, and resumed a role of normalcy—MAKING MEDICATION UNNECESSARY! That type of diagnosis is an accepted medical practice. Moreover, it worked effectively. Dr. Smith is an expert witness, with years of experience in his expertise. Lee Andrew Williams has no medical expertise, nor does the jury that ignored the uncontroverted testimony of expert witness Dr. Smith. *Estelle v. Gamble,* 429 U.S. 97 (1976) does not require any medical attention except what is appropriate treatment for an ACTUAL illness of an inmate.

In the case of *Hamm v. DeKalb County,* 774 F.2d 1567, 1575 (11th Cir. 1985) the Court says:

> ". . . Hamm received significant medical care while at the jail. Although Hamm may have desired different modes of treament, the care the jail provided did not amount to deliberate indifference. . . ."

In *Bass v. Sullivan,* 550 F.2d 229, 233 (5th Cir. 1977), *cert. denied* 434 U.S. 864, that Court said:

> "Since Bass received treatment which, at a minimum, satisfied constitutional requirements, neither Dr. Baranowski nor his supervisory officials can be held liable in this civil rights action. Bass' constitutional rights not having been breached, no one is liable on any theory."

Doctor Smith has a qualified immunity, acting in the regular course of discharging his official duties. *Cruz v. Beto,* 603 F.2d 1178 (5th Cir. 1979). A year later, that Court said in *Douthit v. Jones,* 619 F.2d 527, 534 (5th Cir. 1980):

> ". . . An official such as a police officer, whose discretion is limited, however, must demonstrate that he acted with a good faith belief that his actions were within his lawful authority, and that reasonable grounds existed for this belief based upon objective circumstances at the time he acted. . . ."

Doctor Smith was given proof positive that Lee Andrew Williams was faking a seizure to deceive the Deputies questioning him about a missing weapon. The Doctor's correct diagnosis provides him immunity.

Plaintiff complains that Dr. Smith was cruel in stepping on plaintiff's bare foot. The Doctor admitted doing so, but said that it was an accepted medical practice for a practitioner to see if a patient was faking a seizure by administering a sudden, sharp pain to the patient. The Doctor did and the patient was. The jury was not empowered to disregard all the medical expertise to which the Doctor testified, and the overwhelming testimony of all witnesses other than Williams.

WHEREFORE, petitioners pray the Court to grant this Petition for Writ of Certiorari to the Court of Appeals for the Fifth Circuit, that it reverse the judgment of that Court, and that it set aside the verdict of the jury in the District Court against Jail Captain Gaines and Jail Doctor Smith as being contrary to the evidence competently presented to the jury.

Respectfully submitted,

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(713) 221-5101

Attorneys for Petitioners

CERTIFICATE OF SERVICE

This is to certify that on this 18 day of August, 1987, I caused to be placed three signed true copies of this Petition in the United States Postal Service, with proper postage prepaid, addressed to counsel of record for respondent:

Beatrice Mladenka-Fowler, Esquire
3303 Main Street, Suite 300
Houston, TX 77002-9392

Billy E. Lee

BILLY E. LEE
Assistant County Attorney

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APPENDIX

INDEX TO APPENDIX

		Page
A.	Jury Answers to Interrogatories Nos. 8, 9, 10, 11, 13, 14, 24, 25 and 30	1a
B.	District Court Judgment of August 15, 1986	10a
C.	Captain Gaines' Motion for Judgment NOV, or for New Trial	12a
D.	Dr. Smith's Motion for Judgment NOV, or for New Trial	15a
E.	District Court Order denying Motions for Judgment NOV, or for New Trial, of October 7, 1986	19a
F.	Court of Appeals Summary Affirmance of May 14, 1987 (819 F.2d 1140)	21a

INTERROGATORY NO. 9

EIGHTH AMENDMENT CRUEL & UNUSUAL PUNISHMENT CLAIM: ALLEGED BEATINGS

Instruction:

Answer this interrogatory only if you have found that one or more of the defendants in Interrogatory 8 violated Mr. Williams' Eighth Amendment right to be free from the infliction of cruel and unusual punishment. Cross out the names of any defendants you found in Interrogatory 8 did not violate Mr. Williams' Eighth Amendment right. Then answer this interrogatory.

Interrogatory

Do you find from a preponderance of the evidence that on or about July 23, 1978, Messrs. Anderson, DesChamps, Dorman, Gaines, Lassen, Sparks, or Dr. Smith were following an official policy or custom of Sheriff Heard's when, if at all, they violated Mr. Williams' Eighth Amendment right?

Were Following A Policy	Were Not Following A Policy	
_____	_____	Mr. Anderson
_____	_____	Mr. DesChamps
_____	_____	Mr. Dorman
_____	_____	Mr. Gaines
_____	_____	Mr. Lassen
_____	√	Mr. Smith
_____	_____	Mr. Sparks

INTERROGATORY NO. 10

EIGHTH AMENDMENT CRUEL & UNUSUAL PUNISHMENT CLAIM: ALLEGED BEATINGS

Instruction:

Answer this interrogatory only if you have found that one or more of the defendants in Interrogatory 8 violated Mr. Williams' Eighth Amendment right to be free from the infliction of cruel and unusual punishment. Cross out the names of any defendants you found in Interrogatory No. 8 did not violate Mr. Williams' Eighth Amendment right. Then answer this interrogatory.

Interrogatory

Do you find from a preponderance of the evidence that on or about July 23, 1978, Messrs. Anderson, DesChamps, Dorman, Gaines, Lassen, Sparks, or Dr. Smith were following an official policy or custom of Harris County when, if at all, they violated Mr. Williams' Eighth Amendment right?

Were Following A Policy	Were Not Following A Policy	
_____	_____	Mr. Anderson
_____	_____	Mr. DesChamps
_____	_____	Mr. Dorman
_____	_____	Mr. Gaines
_____	_____	Mr. Lassen
_____	√	Mr. Smith
_____	_____	Mr. Sparks

INTERROGATORY NO. 11

EIGHTH AMENDMENT CRUEL & UNUSUAL PUNISHMENT CLAIM: ALLEGED BEATINGS

Instruction:

This interrogatory concerns only those defendants, if any, that you found in Interrogatory 8 violated Mr. Williams' right to be free from the infliction of cruel and unusual punishment. To simplify this answer, first cross out below the names of those defendants, if any, you found in Interrogatory 8 did *not* violate Mr. Williams' Eighth Amendment right to be free from cruel and unusual punishment. Then answer this question.

Interrogatory:

Do you find from a preponderance of the evidence that one or more, if any, of the defendants you found in Interrogatory 8 to have violated Mr. Williams' Eighth Amendment right, acted in good faith in connection with the incidents inquired into in Interrogatory 8, as "good faith" has been defined for you by the Court?

Acted In Good Faith	Did Not Act In Good Faith	
_____	_____	Mr. Anderson
_____	_____	Mr. DesChamps
_____	_____	Mr. Dorman
_____	_____	Mr. Gaines
_____	_____	Mr. Lassen
_____	√	Dr. Smith
_____	_____	Mr. Sparks

INTERROGATORY NO. 13

EIGHTH AMENDMENT CRUEL & UNUSUAL PUNISHMENT CLAIM: ALLEGED BEATINGS

Compensatory Damages

What amount of money, if any do you find would compensate Mr. Williams for the injuries, if any, you found he suffered in Interrogatory 8 in connection with any finding you made that his right to be free from the infliction of cruel and unusual punishment was violated?

Amount	
_____	Mr. Anderson
_____	Mr. DesChamps
_____	Mr. Dorman
_____	Mr. Gaines
_____	Mr. Lassen
$1,000	Dr. Smith
_____	Mr. Sparks
_____	Sheriff Heard
_____	Harris County

INTERROGATORY NO. 14

EIGHTH AMENDMENT CRUEL & UNUSUAL PUNISHMENT CLAIM: ALLEGED BEATINGS

Punitive Damages

What amount of money, if any, do you find would punish the defendants you have found violated Mr. Williams' Eighth Amendment right and were not acting in good faith and would deter others from such similar conduct?

Amount	
_____	Mr. Anderson
_____	Mr. DesChamps
_____	Mr. Dorman
_____	Mr. Gaines
_____	Mr. Lassen
$5,000	Dr. Smith
_____	Mr. Sparks
_____	Sheriff Heard
_____	Harris County

(Cell issue)

INTERROGATORY NO. 24:

Do you find from a preponderance of the evidence that Messrs. Heard, Gaines, Sparks or Dr. Smith, or any one of them, knowingly and without justification, on July 23, 1978, placed Mr. Williams in a cell in 3-5 only for the purpose of punishing him?

Answer "yes" or "no."

Gaines	Yes
Heard	No
Smith	No
Sparks	No

Instruction: If you have answered "yes" to Interrogatory No. 24, then answer Interrogatory No. 25. If you answered "no" to Interrogatory No. 24, then do not answer Interrogatory No. 24, but go on to answer Interrogatory No. 31.

INTERROGATORY NO. 25:

Do you find from a preponderance of the evidence that by placing Mr. Williams in a cell in 3-5 solely to punish him, Messrs. Gaines, Heard, Smith or Sparks, or any one of them, on July 23, 1978, proximately caused his injuries, if any?

Answer "yes" or "no"

Gaines	Yes
Heard	No
Smith	No
Sparks	No

Instruction: In you answered "yes" to Interrogatory No. 25, then go on to answer Interrogatory No. 26. If you answered "no" to Interrogatory No. 25, do not answer Interrogatory No. 26, but go on to answer Interrogatory No. 31.

INTERROGATORY NO. 30:

What sum of money, if now paid in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Mr. Williams for his injuries, if any, which you find from a preponderance of the evidence resulted from placing him in a cell in 3-5 solely to punish him?

Answer in dollars and cents for the defendant or defendants as applicable from your answer to Interrogatory No. 25.

Gaines	$1,000
Heard	_____
Smith	_____
Sparks	_____

Instruction: Continue on to answer Interrogatory No. 31.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

C.A. No. H-79-1977

LEE ANDREW WILLIAMS

v.

JACK HEARD, et al.

(Filed August 15, 1986)

JUDGMENT ON JURY VERDICT

This action was tried before the Court with jury, which rendered its verdict. In accordance with the jury's findings, it is, therefore,

ORDERED that Plaintiff Williams recover from Defendant Donald W. Smith, in his individual capacity, the sum of $1,000.00 in compensatory damages and $5,000.00 in punitive damages, with legal rate of interest, until paid, as provided by law; costs and attorneys fees; and,

ORDERED that Plaintiff Williams recover from Defendant C. R. Gaines, in his individual capacity, the sum of $1,000.00 in compensatory damages, with legal rate of interest, until paid, as provided by law; costs and attorneys fees; and,

ORDERED that Plaintiff Williams take nothing against Defendants Jack Heard, Billy F. Anderson, Louis T. DesChamps, Richard A. Dorman, David R. Lassen, W. T. Sparks and Harris County, Texas, and that they be dismissed with prejudice.

DONE at Houston, Texas, this the 15th day of August, 1986.

/s/ WOODROW SEALS
Woodrow Seals
United States District Judge

APPROVED AS TO FORM:

/s/ BEATRICE MLADENKA-FOWLER
Beatrice Mladenka-Fowler
Nelson, Lock & Fowler
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Attorney for Plaintiff
Lee Andrew Williams

/s/ BILLY E. LEE
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Attorney in Charge for Defendants
Heard, Gaines, Anderson, Dorman,
Lassen, Smith and Sparks

/s/ ANN HARDY
Ann Hardy
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Jim L. DeFoyd
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Attorney in Charge for Defendant
L. T. DesChamps

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. H-79-1977

LEE ANDREW WILLIAMS

v.

DEPUTY SHERIFF C. R. GAINES, ET AL.,

MOTION FOR JUDGMENT NON OBSTANTE
VEREDICTO, OR FOR NEW TRIAL

The jury answered Interrogatory No. 24 that Captain Gaines knowingly and without justification on July 23, 1979, placed Mr. Williams in cellblock 3/5 only for the purpose of punishing him. No support is found in the evidence for the jury to make such a finding.

Lee Andrew Williams did not give any testimony as to Captain Gaines assigning him to a cell during his detention in jail.

Captain Gaines testified that he did not make any cell assignments, that such assignments were made by the Classification Officer. Captain Gaines further testified that if he removed a prisoner from a cell assigned to the prisoner by the Classification, he, the Captain, could only place the prisoner in administrative segregation until Classification made a new cell assignment for the prisoner. It was the further testimony of Captain Gaines that he made the decision to break up the team of the three convicts who attempted the escape. The Captain

assigned one prisoner to one floor and another prisoner to the other floor, those being the only two floors generally utilized to house prisoners in the Central Jail. The third prisoner of the escapees was sent to the Detention Center. Captain Gaines did not assign any of the three to a particular cell, that being the duty for the Classification Officer to assign cell housing to individuals.

Captain Gaines further testified that each of the three escapees was to be detained in maximum security cells—a status merited by the recidivist actions of each of them and a continuation of the policy already existing toward each escapee even before the attempt at escaping. Captain Gaines testified that cellblock 3/5 was a maximum security cell, but, unlike the cellblock from which Lee Andrew Williams escaped, each inmate—including Lee Andrew Williams—had an individual cell all to himself, within the cellblock.

Plaintiff's witness Oitzinger testified that cellblock 3/5 was used for psychiatric inmates, principally, from his observations of that jail floor. Captain Gaines testified that State law and the policy in the jail was to segregate psychiatric and psychopathic inmates from other prisoners and to get them into hospital care at the earliest opportunity. Until a hospital could receive such an afflicted inmate, of necessity the jail had to keep him confined, and in a maximum security unit. The single celling enjoyed by plaintiff is not a matter over which plaintiff has cause for complaint. Not one prisoner in jail or the penitentiary likes his cell. Confinement is the duty of the jailors, not the jury. This is well-established law.

The jury had no evidence before it to support its finding that Captain Gaines assigned this prisoner to cellblock

3/5 for punishment. That verdict should be set aside, as a matter of law.

MIKE DRISCOLL
County Attorney
Harris County, Texas

/s/ BILLY E. LEE
Billy E. Lee, Attorney in Charge
Assistant County Attorney
1001 Preston, Suite 634
Houston, Texas 77002

Attorneys for Captain Gaines

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. H-79-1977

LEE ANDREW WILLIAMS

v.

DONALD W. SMITH, M.D., ET AL.,

MOTION FOR JUDGMENT NON OBSTANTE VEREDICTO, OR FOR NEW TRIAL

The jury answered Interrogatory Nos. 8, 9, 10, and 11, that Dr. Smith violated plaintiff's right to be free from the infliction of cruel and unusual punishment. The jury findings are not supported by the evidence given to the jury.

Plaintiff Williams testified that Deputies took him to the Doctor's office in the jail, that plaintiff was lying on the floor, that the Doctor stepped on his foot, and that the Doctor stuck a needle into his body, for no reason other than malice.

Doctor Smith testified that plaintiff was brought into his office by two Deputies and a Medical Assistant. The plaintiff was feigning a seizure of catalepsy when brought to the office; he was not responsive to questioning; he was salivating and rolling his eyes. When a preliminary examination of plaintiff's body did not disclose any causative wound for such behaviour, Dr. Smith then made further testing of the patient's reflexes to determine

whether a real state of seizure existed or was feigned. Preliminary testing, such as holding the patient's hand over his eyes and then turning it loose, disclosed that no seizure existed probably, but plaintiff still would not make normal responses. Medical treatment of a seizure-stricken patient is very potent and is not recommended if there is a probability that the affliction is feigned and not real. Dr. Smith testified that an accepted medical practice is to administer a sharp sudden pain to the body of the patient. If the patient responds, he is faking the seizure and there is no medical necessity to administer a potent medical shock to his physical system. Plaintiff Williams did respond to the sharp sudden pain by dropping his faking of a seizure and by becoming indignant at being so treated.

Dr. Smith is a medical doctor, an expert at physician skills. His testimony of accepted medical practice, usual medical practice, was not in any way controverted by any expert testimony. Plaintiff disagrees with the treatment accorded him, but it is a tendency for many patients to disagree with the treatment their Doctor gives them. A second opinion calls for a second expert to apply his expertise to the same physical body and complaints. A jury is not such an expert on the practice of medicine that it can sit in judgment on treatment provided by an expert practitioner. A jury has nothing before it unless another practitioner from the same field controverts the first expert's diagnosis and treatment. Then the jury can believe the testimony of one and disbelieve the testimony of the other. In this case the jury is not competent to reject the expertise of Dr. Smith and to accept the evidentiary statements of plaintiff Williams that reach other conclusions. Dr. Smith was not oblivious to the medical

needs of Lee Andrew Williams. After making a tentative diagnosis he made a final test—by administering sudden sharp pain to the body of the plaintiff by stepping on his toes. Plaintiff stopped deceiving the Doctor by pretending to be having a seizure, but his deception to the jury caused the jury to decide a matter that should not have been put before the jury on the evidence they had heard.

The jury had no expert medical evidence before it other than the testimony of Dr. Smith that his treatment of plaintiff was according to accepted medical practices and that such sudden sharp pain administered to plaintiff's body demonstrated that plaintiff was faking catalepsy and did not need to be treated with a powerful stimulant to snap him back to normalcy. Plaintiff's testimony does not raise any issue for the jury to decide between that testimony and the testimony of the Doctor.

MIKE DRISCOLL
County Attorney
Harris County, Texas

/s/ BILLY E. LEE
Billy E. Lee, Attorney in Charge
Assistant County Attorney
1001 Preston, Suite 634
Houston, TX 77002

Attorneys for Dr. Smith

CERTIFICATE OF SERVICE

This is to certify that on this 15th day of August, 1986, I caused a signed true copy of the above and foregoing Motion to be placed in the United States Postal Service, with proper postage prepaid, addressed to other counsel of record in this cause:

BEATRICE MLADENKA-FOWLER
3303 Main, Suite 300
Houston, TX 77002-9392

JIM DeFOYD
1612 Richmond Avenue
Houston, TX 77006

ANN HARDY
Assistant County Attorney
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Houston, TX 77002

/s/ BILLY E. LEE
Billy E. Lee
Assistant County Attorney

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

C. A. NO. H-79-1977

LEE ANDREW WILLIAMS,
Plaintiff,

v.

JACK HEARD, ET AL.,
Defendants.

(Filed October 7, 1986)

ORDER

Comes now to be heard the Motion for Judgment Non Obstante Verdicto filed by Defendant Harris County and the Motion for Judgment Non Obstante Verdicto, or for New Trial filed by Defendants Smith and Gaines in the above-styled cause. Having considered all of the facts and memoranda before it, as well as the arguments of counsel, the Court concludes that the motions should be DENIED.

A motion for judgment *non obstante verdicto* should be denied:

> if there is substantial evidence opposed to the motion, that is, evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions. . . . [I]t is the function of the jury as the traditional finder of the facts, and not the Court, to weigh con-

flicting evidence and inferences and determine the credibility of witnesses.

Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc).

The Court is in agreement with Plaintiff, first, that Dr. Smith testified as a fact witness and that it was within the province of the jury to determine his credibility. The Court also agrees with Plaintiff that the evidence adduced at trial was of such quality and weight that reasonable and fair-minded persons in the exercise of impartial judgment might reach different conclusions regarding any roles Defendants Gaines and Smith may have played in depriving Plaintiff Williams of his civil rights. Finally, the Court finds no reason to support the granting of a new trial as to those two defendants.

For the reasons just discussed, it is hereby ORDERED that Harris County's Motion for Judgment Non Obstante Verdicto and Defendants Gaines' and Smith's Motions for Judgment Non Obstante Verdicto, or for New Trial are DENIED.

DONE at Houston, Texas, this 7th day of October, 1986.

/s/ WOODROW SEALS
United States District Judge

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 86-2906
Summary Calendar

LEE ANDREW WILLIAMS,
Plaintiff-Appellee,

v.

JACK HEARD, ET AL.,
Defendants,

DONALD W. SMITH, M.D. and
CAPTAIN C. R. GAINES,
Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-79-1977)

(May 14, 1987)

Before GEE, REAVLEY, and JOLLY, Circuit Judges

Per Curiam:

AFFIRMED, See Local Rule 47.6.